

REMARKS

The Examiner's rejection of claims 11, 13 and 14 under 35 U.S.C. 103(a) as being unpatentable over DeVincenzo, et al. (5,853,291) is respectfully traversed. As the Examiner correctly states, DeVincenzo ('291) shows a "subperiosteal system." This is precisely the reason that applicant's invention is completely different than the DeVincenzo '291 device. Applicant's system is not a subperiosteal system. Applicant's system is a bone anchor. The great difference is that the subperiosteal system shown in DeVincenzo '291 works completely different than applicant's invention and is structured accordingly to function differently. In DeVincenzo ('291), in column 4, lines 54 through 61 states as follows:

The periosteum and other soft tissues will then be closed over the base of the device, while the stem 31 protrudes through the membrane to position the ball 29 outside. As a result, when the tissue heals and enough time has passed to have ossointegration, the stemplant is ready for utilization with an orthodontic appliance without the need for a second surgical procedure to expose the protruding part.

This is precisely the medical procedure applicant's invention is intended to avoid. With the use of applicant's bone anchor, there is no waiting period for soft tissue to grow around the anchor device. The structure of DeVincenzo as shown in Figure 1 and Figure 2 and Figure 3 includes a plurality of scalloped edges 20 that extend from leaves 16. This is where the tissue grows. The DeVincenzo '291 scalloped leaf edges 20 are the true anchors of the system.

Considerable time is required before any periodontal attachment can begin. The screws or nails mentioned in column 4, lines 52 through 54 are not bone anchors as required in applicant's device but are to hold down the leaves 16 against the bone for tissue growth over them. Therefore, it is applicant's position that the Examiner has failed to create a prima facie case of obviousness based on 35 U.S.C. 103.

The Examiner's rejection of claims 1, 2, 7, 8 and 12 of 35 U.S.C. 103(a) as being unpatentable over DeVincenzo (5,853,291) in view of DeVincenzo (5,938,437) is respectfully traversed. Applicant herein reiterates the arguments presented above as to why DeVincenzo ('291) is an inapplicable reference that does not teach nor suggest applicant's claimed invention. Further, since it is a different invention, it is applicant's position that the combination of DeVincenzo ('437) is inappropriate since the two inventions are not compatible for the specific teaching sought by the Examiner. Furthermore, it is applicant's position that even if the references were combined, applicant's claimed invention would not result. DeVincenzo '291 uses subperiosteal tissue that takes a long period for the device to be secured. It seems that this device is completely incompatible with DeVincenzo '437 which is structured completely different and operates differently. Again, in order to create a prima facie case of obviousness, the Examiner must provide references that suggest the combination that results in applicant's invention that would be obvious to one of ordinary skill in the art. Claim 1 has been amended to include the limitations of claims 2 and 3 to more specifically recite the structural features of applicant's invention not shown in DeVincenzo ('291) and DeVincenzo ('437). Claim 2 has been cancelled.

The Examiner's rejection of claims 3, 9 and 10 under 35 U.S.C. 103(a) as unpatentable over DeVincenzo (5,853,291) in view of DeVincenzo (5,938,437) as applied to claim 1 above and further in view of Kanomi, et al. (5,921,774) is respectfully traversed. Applicant reiterates applicant's arguments presented above against the combination of DeVincenzo '291 and DeVincenzo '437. The combination would not result in applicant's claimed invention and the references teach away from each other as described above. Kanomi, et al. does not rescue the mismatch of these two references of DeVincenzo. Even with Kanomi, et al., applicant's claimed invention would not result and would not have been obvious to one of ordinary skill in the art. There is no teaching in Kanomi to suggest the triple combination provided by the Examiner. The Examiner has failed to provide a *prima facie* case of obviousness as required under 35 U.S.C. 103. Claim 3 has been cancelled.

The Examiner's rejection of claims 4 through 6 under 35 U.S.C. 103(a) as being unpatentable over DeVincenzo (5,853,291) in view of Kanomi, et al. (5,921,774) is respectfully traversed. Again, it is applicant's position that DeVincenzo '291 is inapplicable as a reference against applicant's claimed bone anchor which is not shown nor taught in DeVincenzo '291. Therefore, the combination of DeVincenzo '291 with Kanomi, et al. would not produce applicant's invention. The Examiner has failed to produce a *prima facie* case of obviousness as required under 35 U.S.C. 103.

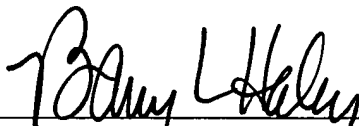
The Examiner's rejection of claims 11 through 13 under 35 U.S.C. 101 on the basis that the claimed invention is directed to non-statutory subject matters is respectfully traversed. Applicant has amended the term "mounted on at least one of patient's teeth" to "mountable."

In re application: PAYTON, Kevin L.
Serial No. 09/833,898
Page 11

The Examiner's rejection of claim 14 under 35 U.S.C. 112 is respectfully traversed. Applicant has amended claim 13 to remove the indefiniteness related to the terms "adjacent" and "no-excusal," which was a typo.

If there are any additional charges, including extension of time, please bill our Deposit Account No. 13-1130.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Barry L. Haley", is written over a horizontal line.

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